

September 8, 2020

House Insurance Committee

via email to Committee Clerk Sergio Cavazos at [Sergio.Cavazos\\_HC@house.texas.gov](mailto:Sergio.Cavazos_HC@house.texas.gov)

**Re: Interim Charge 1 - Monitoring SB 1264**

Chairman Lucio,

Please accept these comments from AARP Texas and Every Texan (formerly the Center for Public Policy Priorities) related to the implementation of SB 1264 and your efforts to protect consumers.

The new law ending surprise medical bills has been fully in place now for nine months and early results show the law is achieving its central aim to prohibit out-of-network health care providers from sending balance bills to patients for those health care services covered under the law. The Texas Legislature should consider improvements to the law and monitor the overall impact of the law on health care costs.

**Expand SB 1264 to Include Ambulance Services**

After the passage of SB 1264 health care providers may no longer balance bill patients for most services when the patient did not actively chose to receive out-of-network care. Unfortunately, this prohibition does not include ambulance services. We've heard from several patients about their experience with surprise medical bills from ambulance services and included in our comments (see attachment: Ambulance Bills) are the redacted bills from one patient showing the frustration created when a patient is pitted between an insurer and ambulance provider. In summary:

- The patient contracted COVID-19 in March 2020 and had to be intubated for 20 days. His wife was told to make final preparations for him.
- He came out of his coma on Good Friday -- April 10 -- and has since mostly physically recovered.
- He was being cared for at Baylor Scott & White Medical Center (Temple, TX) and was scheduled to be transferred to a rehabilitation facility in Round Rock on April 16 -- about a 30-40 minute drive.
- The family offered to drive him themselves, but the hospital called an ambulance -- Lone Star Ambulance LLC operated by Allegiance Mobile Health.
- He was not put on oxygen during the drive.
- Lone Star/Allegiance's charges amounted to \$3,565 -- BCBS of Texas paid the "usual and customary rate" for the service which was \$1,336.41.
- The patient has received several bills now from Allegiance for the remaining balance of \$2,228.59, has been sent to a collections agency, and is worried about his credit report.

SB 1264 was designed specifically to prevent this financial distress for patients but ambulance services were not included in the law. Clearly, this patient's story indicates the need to bring ambulance services under the new law.

## Monitor the Impact of Arbitration and Billed Charges

Additionally, we are concerned about new evidence that points to potential health care cost problems associated with Texas' approach to resolving balance billing disputes, specifically related to the use of billed charges and arbitration.

AARP Texas and Every Texan proudly supported the passage of SB 1264 and remain committed to seeing that the law protect consumers from surprise medical bills and do so while avoiding unintended consequences of higher health care prices and overall spending. Ultimately, increased health care spending - even without surprise medical bills – contributes to increased monthly premiums and more exposure to meeting high cost sharing (deductible, co-insurance, co-pay).

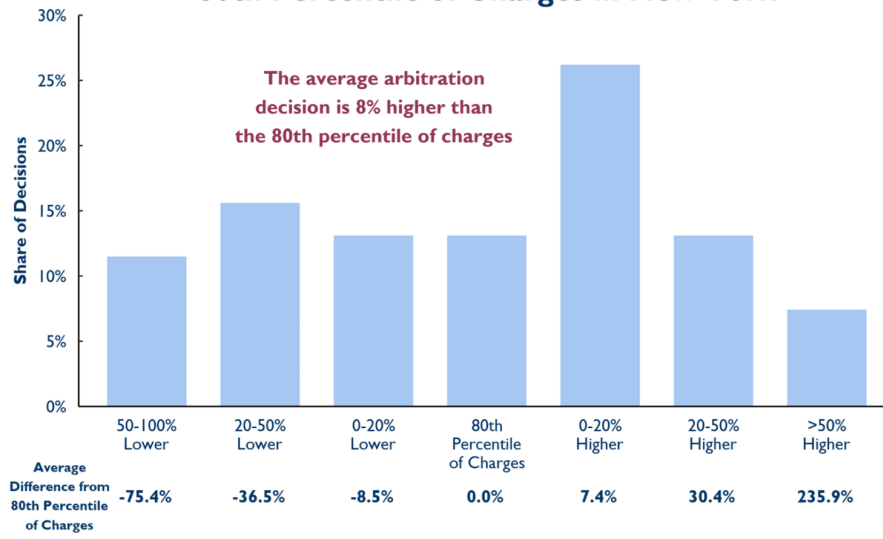
During the legislative debate on SB 1264 there was scarce evidence about the market impact of using arbitration to resolve billing disputes. In a [“working paper” published in 2018](#) prior to the legislative session, authors pointed to early data that suggested New York's arbitration approach to surprise medical bills was potentially increasing network participation and lowering costs. Texas lawmakers had no other guidance to use in measuring the potential impact of a similar Texas law and ultimately included arbitration and a billed charges standard as elements of the law.

Unfortunately, more recent evidence points to potential problems on the horizon in Texas, and we encourage lawmakers to closely monitor the marketplace in Texas. A Congressional Budget Office (CBO) accounting of the financial impact of a federal arbitration approach to ending surprise medical bills estimates over \$20 billion in additional federal spending over 10 years.

At a Glance			
<b>H.R. 2328, Reauthorizing and Extending America's Community Health Act</b>			
<b>As ordered reported by the House Committee on Energy and Commerce on July 17, 2019</b>			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	40,394	41,027
Revenues	0	6,631	20,938
Increase or Decrease (-) in the Deficit	0	33,764	20,090
Spending Subject to Appropriation (Outlays)	0	67	not estimated

A 2019 USC-Brookings Schaeffer Initiative [analysis](#) of data released by the New York Department of Financial Services (DFS) found that in the first three years under the new law “the state's arbitration process is substantially increasing what New Yorkers pay for health care.” The key elements to blame were arbitration and the use of a payment standard of the 80<sup>th</sup> percentile of billed charges in determining the result of arbitration.

### Arbitration Decisions Relative to 80th Percentile of Charges in New York



Note: The New York Department of Financial Services estimated this distribution by examining a random sample of 181 decisions between 2016 and 2018.  
Source: New York Department of Financial Services

USC Schaeffer

BROOKINGS

The Texas Department of Insurance (TDI) released [early data](#) related to the state's new law which includes some good news and several points of caution.

- Complaints to TDI about balance billing are down 96% year over year, indicating that consumers are likely not receiving surprise bills – the primary aim of the legislation.
- Average arbitration decisions lean towards the original billed amount vs the original health plan reimbursement. However, when TDI looked at just emergency physician bills, the opposite was true.
- TDI does not report on the revised billing and reimbursement offers that both parties are able to make during the process, and it's likely that this provision of the law is impacting arbitrator decisions. An overall goal of the law is to get more accurate and fair pricing as well as reasonable insurer reimbursements upfront. However, if both parties can submit new offers during arbitration then there is no incentive to make a better offer upfront and the concept of "baseball style" arbitration is lost.
- Just three physician staffing firms represent 85% of all arbitration requests and emergency physicians account for 85% of all arbitration requests. This is a clear indication that large private equity backed ER physician staffing firms – not independent physicians and small practices - are testing the new law to determine if they can utilize arbitration to their benefit.

While TDI's initial report provides some insights, TDI does not collect enough data today to support analyses to show how arbitration is affecting the cost of health care. The Departments of Insurance in both [New York](#) and [New Jersey](#) capture data at the billing-code level and produce reports that contain or support more meaningful analysis. TDI should collect this same level of data so it can produce a report that shows how charges, payments, and arbitration decisions compare to both the 80<sup>th</sup> percentile of charges and median in-network rate.

**SB 1264 Related Recommendations:**

- Prohibit surprise medical bills from emergency medical transportation/ambulance services. Consider using mediation instead of arbitration to resolve these disputes.
- Improve data collection so TDI can better monitor the impact of arbitration and a billed charges standard as a part of arbitration to determine the impact on health care spending, market consolidation, and the need for modifications to the law.
- Ask TDI to include data about how allowing a revised bill and revised insurance reimbursement is impacting arbitration decisions.
- Monitor the impact of the new law on small and independent physician practices vs large private equity backed physician practices.

Sincerely,



Blake Hutson

AARP Texas



Stacey Pogue

Every Texan